IRS EXAMINATION REPORT AND OPINION:

SUMMARY OF DELINQUENT TAX LIABILITY
BY
CODE SECTION

(1) SECTION 4041(A) - DIESEL FUEL TAX
PERIOD - July 1, 1973 through
December 31, 1977

(a) Highway Diesel Powered
Vehicles (Chip Trucks)
Tax Rate 4¢
Proposed delinquent
liability $49,029.16

(b) Highway Diesel Powered
Vehicles (Water Trucks)
Tax Rate 4¢ - Licensed
Highway Type $534.00
Tax Rate 2¢ - Unlicensed
Highway Type $192.00

(2) SECTION 4041(B) - SPECIAL MOTOR FUEL
(PROPANE)
PERIOD - January 1, 1975 through
December 31, 1977
Tax Rate 2¢
Proposed delinquent
liability $2,484.78

(3) SECTION 4061(A) - MANUFACTURER
(TRUCK CHASSIS)
PERIOD - April 1, 1974 through
June 30, 1974
Proposed delinquent
liability $664.61

TOTAL PROPOSED DELINQUENT
LIABILITY $52,904.55

(4) SECTION 4481 - HIGHWAY USE TAX
CLAIM REJECTION IN FULL
MEMORANDUM AMOUNT CLAIMED ($8,593.50)

OTHER INFORMATION

FACTS:

The books and records of the above named taxpayer were examined pursuant to the Retailers Excise Tax imposed on Special Fuels by Section 4041(a) and (b), the Manufacturers Excise Tax imposed on Truck Chassis by Section 4061(a) and the Federal Use Tax imposed on Highway Motor Vehicles by Section 4481 of the Internal Revenue Code of 1954.

The principal cause of adjustment is the failure of the taxpayer to file the required Forms 720 for the periods shown in this report for the liability they have incurred on Special Fuels, Diesel and Propane, under Section 4041(a) and (b), and the Manufacturer Tax due on the fabrication of the truck from a Glider Kit as required by Section 4061(a). During the examination, the taxpayer also filed Claims for Refund on the Highway Use Tax

returns filed by them which are being disallowed in full as reflected in this report. The taxpayer is not in agreement with these findings and requests a District Conference.

Warm Springs Forest Products Industries located at Warm Springs, Oregon on the tribal lands of the Confederated Tribes of Warm Springs is an entity formed by the Tribal Council. The officers and members of the Warm Springs Forest Products Industries entity are appointed and approved by the Tribal Council and operate and conduct business on behalf of the Confederated Tribes of Warm Springs. This entity is not a corporation and it does not file Income Tax Returns.

In addition to the many business functions of this entity, Warm Springs Forest Products Industries, herein referred to as taxpayer, owns and operates licensed diesel powered highway motor

vehicles from the Tribal Lands to various points in the State of Oregon along public highways. These trucks by the virtue of their use on the public highways of Oregon are licensed highway trucks which are under the control and reporting to the Oregon Public Utilities Commission. These diesel powered highway trucks use diesel from bulk storage for which no tax has been paid or collected.

Located on the plant site is bulk diesel storage for which the federal excise tax has not been collected or authorized to be collected under Revenue Procedure 73-20. Taxpayer has two bulk tanks located on the reservation, one is used only to fuel the Highway Chip Trucks, as discussed above, and the other for all other trucks and is considered a non-highway bulk fuel tank.

Under the provisions of Section 4041(a)(2) the use of tax free diesel in

the tanks of a registered diesel powered highway motor vehicle is subject to tax at the rate of four (4) cents a gallon. Schedule 1, part 1(a) reflects the delinquent diesel fuel used for which the tax is due of $49,029.16. In addition to this use of fuel, there was the occasional use of fuel from the non-highway diesel tanks by both licensed and unlicensed diesel powered water trucks. This additional liability is reflected in part 1(b) of the same schedule and reflects a delinquent liability of $534 and $192 respectively for the licensed and unlicensed diesel water trucks.

The taxpayer has bulk storage for Special Motor Fuel, Propane, used in their propane propelled fork lifts. In the review of applicable invoices it was noted that 2¢ a gallon was charged on the bulk deliveries of propane to the taxpayer storage tanks. No authorization was

executed pursuant to Revenue Procedure 73-20 for the collection of any tax. To enable the taxpayer to maintain a consistent position in this examination and to avoid a possible overpayment of tax, it was suggested tax paid for the period from January 1, 1975 through December 31, 1977 be refunded from Williams Energy Company and that this tax be reflected in this examination. Accordingly the amount applied for and refund of $2,484.78 as reflected in Part 2 of Schedule 1, page 4 is restored to taxability. Under the provisions of Section 4041(b)(2) the use of tax free special motor fuel in the tank of a motor vehicle is subject to tax at the rate of 2¢ a gallon.

In May, 1974 the taxpayer acquired a Glider Kit Serial #103283 and completed the kit into a new truck chassis. The taxpayer failed to report the additional

manufacturers tax due on the fabrication of this taxable product as imposed under Section 4061(a). The method of computation of the delinquent manufacturers tax is reflected in Exhibit "A" of this report, in addition to the applicable court case and revenue ruling holding this to be a taxable occurrence. The delinquent manufacturer's tax of $664.61 is reflected in part (3) of Schedule 1, page 5 of this report.

In addition to the above noted inconsistency, the collection of tax on Special Motor Fuel, it was noted that the taxpayer filed forms 2290 on the use of Highway Trucks for the periods from 7503 through 7707. To enable the taxpayer to maintain a consistent position and to protect their interest pending the determination and applicability of excise taxes, it was suggested that they file claims on Highway Use Tax Forms 2290 filed

by them and subject to refund claims. These claims, six of them, were filed and received on May 12, 1978 by the District Director, Portland, Oregon. The claim was for a refund of $8,593.50 on the overpayment of Highway Use Tax for the period from April 1, 1975 through June 30, 1978. The claims were based on the following contention (in summary): (Refer to brief attached to claims)

TAXPAYER'S POSITION:

The taxpayer is not subject to Excise Taxes because they are implicitly exempt under the governmental exemption, Sec. 4483(a); ie a quasi-governmental body. Taxation of an Indian Tribe is contrary to Squire v. Capoeman and Revenue Ruling 67-284. Excise taxes cannot be imposed against an Indian tribe merely by implication from the absence of an express exemption in the Internal Revenue Code.

There is pending Federal Legislation, HR4089, which will recognize Indian Tribes are entitled to tax treatment at least as favorable as state and local government.

In addition to the brief attached to the claims, the taxpayer through their attorneys filed 2 briefs, one of December 22, 1977 and one of February 9, 1978 which further set forth their position that Confederated Tribes of Warm Springs Oregon is not subject to the imposition of any excise taxes. The taxpayer and their attorneys expressly request that these briefs be considered a part of the file and considered in the final determination of the applicability of excise tax.

Upon review of the applicable law and regulation, the facts as set forth in the Claim and two Briefs and as developed in the audit, it is accordingly recommended that the Claims be rejected in full.

LAW AND ARGUMENT:

The taxpayer has set forth various Supreme Court, Circuit Court and District Court and Revenue Rulings dealing with Income Tax Status and treatment of Indians. Research has disclosed that no "PARI MATERIA" exists between the concepts as set forth under Income Tax as having applicability to Excise Tax. To the contrary has been noted. If Congress had intended to give implicit excise exemption to Indian Tribes then HR4089 would not be necessary. Congress did give consideration to the excise tax treatments of Indians by the enactment of Sec. 4225, enacted 1/1/59 which affords an exemption for articles of native Indian handicraft. No other exemption has enacted to afford Indians any other relief. Revenue Ruling 58-610 addressed itself directly to the issue as set forth in this examination "An Indian Tribe or Council does not come

within the scope of the exemption from Manufacturers Excise Tax provided by Section 4224, currently 4221, of the Internal Revenue Code of 1954 with respect to sales made for the exclusive use of any State, Territory of the United States...."

Revenue Ruling 58-610 further states:

> "Section 4224, currently 4221, of the Code provides that no manufacturers excise tax shall be imposed upon the sale of any article for the exclusive use of any State, Territory or the United States, or any political subdivision of the foregoing, or the District of Columbia.
>
> An Indian tribe or council, although not a part of the United States Government, is under the supervision of the Bureau of Indian Affairs of the United States Department of Interior. Although a tribe is granted a certain allotment of land within a particular state as a site for its reservation, such a tribe is not a political subdivision or agency of a state. Accordingly, it is held that an Indian council or Indian tribe does not come within the scope of the exemption provided by Section 4224, currently 4221, pertaining to sales made for the exclusive use of a state or political subdivision thereof."

Revenue Ruling 72-334 held that a truck manufactured by an American Indian for use in his business is not exempt from the manufacturers tax on motor vehicles since it is not an "article of native Indian handicraft" within the meaning of Section 4225.

Revenue Ruling 72-335 held that an American Indian residing on a tribal reservation is liable for the highway use tax on the use of his truck in hauling logs on any public roadway inside or outside the Indian reservation.

CONCLUSION:

In light of the above citations, the review of the statutes, the regulations and applicable revenue ruling it is held that the taxpayer erred in failing to file required Forms 720 on the use of Special Fuels under Section 4041(a) and (b) and the Manufacturers excise tax imposed by

Section 4061(a) of the Code. The taxpayer further is liable for the Highway Use Tax Forms 2290 as filed and the claims have been rejected as noted above.

A copy of this report should be sent to the taxpayers attorney as requested on their filed Power of Attorney.

Send copy of this report to:

Owen M. Panner, Attorney
Robert L. Nash, Attorney
c/o Panner, Johnson, Marceau, Karnopp & Kennedy
1026 NW Bond Street
Bend, Oregon 97701

JULY 17, 1981 OPINION OF THE DISTRICT COURT, HON. ROBERT C. BELLONI:

THE COURT: Congress has the power to tax Indian tribes. It has done so. I can find no exemption, express nor implied. I can find nothing in the Treaty, a statute, in American Indian policy, nor in common sense to exclude tribes from this particular excise tax.

Congress has been specifically asked to create the exemption requested here. So far, it has not seen fit to do so. Congress has specifically exempted state and local governments. If it intended to exempt the tribes, it would have said so.

The charge or the use of a highway off the reservation by means of a tax on fuel obviously does not encroach upon The Tribe's sovereignty. In our system of government, the Legislative Branch legislates. It is not the function of the

Judiciary to create exemptions where Congress has not acted.

The broader question, going to my first statement and admission here that Congress has the power to tax Indian Tribes, if Congress, in exercising its power to tax Indian Tribes, is violating its treaty, then the total result here might be different. But this is a much broader proposition than the one claimed here, and it would have an extremely far-reaching effect. It hasn't been argued here, of course, and no serious contention is made that no such practice can be imposed. But I suppose the case law, in deciding that Congress has the power to tax tribes, has at least by implication and probably expressly, says that it does not violate its treaties.

The Defendant's motion for judgment on the pleadings is granted. Plaintiff's

counter-motion for summary judgment is denied.

I see no particular reason to write up anything on this. I have given my reasons sufficient for an Appellate Court to understand the basis, and to do anything else would simply take time that should be better utilized in efforts to have the Court of Appeals take a second look at it.

I don't think counsel needs to prepare anything. The Clerk will simply enter judgment.

(End of Proceedings)

Certified to be a true and accurate transcript of proceedings.

/s/ Joseph F. McCloskey
JOSEPH F. McCLOSKEY
Official Court Reporter

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON,	)	
Plaintiff,	)	Civil No. 80-6261-E
v.	)	JUDGMENT
JEROME KURTZ, COMMISSIONER OF THE INTERNAL REVENUE SERVICE and THE UNITED STATES OF AMERICA,	)	
Defendants.	)	

On the counterclaim by Defendant United States of America, against the plaintiff, judgment is hereby entered in the amount of $81,231.63. This judgment shall bear interest according to law from August 28, 1981.

Dated: 8-18-81

/s/ Robert C. Belloni
For the Court

Submitted by:
/s/ Bruce I. Crocker
BRUCE I. CROCKER
Trial Attorney
Tax Division
Department of Justice
Washington, DC 20530
Telephone: (202) 724-6421

THE CONFEDERATED TRIBES OF the WARM SPRINGS RESERVATION OF OREGON,
Plaintiff-Appellant,

v.

JEROME KURTZ, COMMISSIONER OF THE INTERNAL REVENUE SERVICE, and THE UNITED STATES OF AMERICA,
Defendant-Appellees.

No. 81-3503.

UNITED STATES COURT OF APPEALS,
NINTH CIRCUIT.

Argued and Submitted Aug. 2, 1981.
Decided Oct. 29, 1982.

SNEED, Circuit Judge:

[1] The taxpayer, the Confederated Tribes of Warm Springs Reservation (the Tribe), instituted this action to recover federal excise taxes paid in connection with the operation of a tribal sawmill. The United States cross-claimed for additional excise taxes assessed but not paid. Motions for judgment on the pleadings and summary judgment followed. There exists no dispute with respect to the facts. The only issue is whether the Tribe is exempt

from the federal excise taxes involved here. The district court held that the Tribe is not exempt and entered judgment for the defendants and the United States on its cross-claim. We affirm.

I.

FACTS

The taxpayer is a confederation of Indian tribes which occupies the Warm Springs Indian Reservation in central Oregon. Timber located on the reservation is the Tribe's principal resource and principal source of revenue. Since 1967 the Tribe has owned and operated a sawmill to process and market reservation timber. The sawmill, located on the reservation, operates under the management of the Tribal Council and the Bureau of Indian Affairs.

Four separate federal excise taxes are at issue here: (1) a tax on the use of certain highway motor vehicles, 26

U.S.C. § 4481(a); (2) a tax on diesel fuel used in highway vehicles, 26 U.S.C. § 4041(a); (3) a tax on special fuels used in motor vehicles, 26 U.S.C. § 4041(b); and (4) a tax on manufacturing, in this case a truck chassis assembled by the Tribe, 26 U.S.C. §§4061(a), 4218(a). From April 1975 to June 1978, the Tribe timely paid all taxes due on its use of highway motor vehicles. In May of 1978, however, the Tribe filed for a refund, claiming an exemption from federal excise taxes. The Tribe's refund claim was disallowed and the Internal Revenue Service assessed additional excise taxes payable on the use of fuels and on the assembly of the truck chassis.

The Tribe does not deny that in its sawmill operations it has used the fuel and engaged in the activities with respect to which were assessed the disputed taxes. Rather, the Tribe asserts it is exempt

under provisions of the Internal Revenue Code of 1954 (the Code) that exempt states and political subdivisions of states from liability for the excise taxes involved here. See 26 U.S.C. §§ 4041(g)(2), 4221(a)(4), 4483(a). The Tribe argues alternatively that other federal statutes, as well as the Tribe's treaty with the United States, impliedly exempt it from these federal excise taxes.

II.

THE CODE PROVIDES NO EXEMPTION

Inasmuch as there is no dispute regarding the facts, our review of the district court's legal conclusions is de novo. First Charter Financial Corp. v. United States, 669 F.2d 1342, 1345 (9th Cir. 1982).

The Code exempts from liability for federal excise taxes "any State, any political subdivision of a State, or the District of Columbia." 26 U.S.C. §

4041(g)(2); see 26 U.S.C. §§ 4221(a)(4), (d)(4), 4482(c)(1), 4483(a). The Code and regulations pursuant thereto are silent with respect to Indian tribes. Nonetheless, the Tribe claims to fall within the exemption afforded state governments on the theory that the Tribe is recognized as a governmental entity by the United States.

And so it is in many respects. For example, it has been said that Indian tribes "'are unique aggregations possessing attributes of sovereignty over both their members and their territory.'" Merrion v. Jicarilla Apache Tribe, ___ U.S. ___, 102 S.Ct. 894, 903, 71 L.Ed.2d 21 (1982) (quoting United States v. Mazurie, 419 U.S. 544, 557, 95 S.Ct. 710, 717, 42 L.Ed.2d 706 (1975)). Unlike state governments, however, "[t]he right of tribal self-government is ultimately dependent on and subject to the broad

power of Congress." White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 143, 100 S.Ct. 2578, 2583, 65 L.Ed.2d 665 (1980). This distinguishes Tribes from States. Tribal governments, while possessing aspects of self-rule, thus are quite distinct from the several states. Id. So in many respects is the District of Columbia. Congress, however, expressly exempted the District of Columbia from federal excise taxes. No similar exemption of Indian tribes exists. It follows that the state government exemption is not applicable to the Tribe merely because it is recognized as a governmental entity with the limited powers of a quasi-sovereign. A specific exemption remains necessary.

Also the Tribe is not a political subdivision of the State of Oregon; it derives no authority from the state. State authority with respect to

reservation Indians is limited both by the Tribe's right of self-government and the preemptive effect of federal law. White Mountain Apache Tribe v. Bracker, 448 U.S. at 142, 100 S.Ct. at 2583. The state and the Tribe each functions within its proper sphere. Neither is a creature of the other. Only entities possessing at least some portion of the state's sovereign powers, or performing some portion of the state's traditional government functions, qualify for the federal excise tax exemption as political subdivisions of states. Washington State Dairy Products Commission v. United States, 685 F2d 298, 300 (9th Cir. 1982).

[2] Lacking an express exemption under the Code, the Tribe would have us find an ambiguity in the pertinent provisions of the Code merely because of its silence as to the taxability of tribal

governments.[1] It is true that ambiguous statutes and treaties are to be construed in favor of Indians, and this canon of statutory construction applies to tax exemptions. Choate v. Trapp, 224 U.S. 665, 675, 32 S.Ct. 565, 569, 56 L.Ed. 941 (1912); United States v. Anderson, 625 F.2d 910, 913 (9th Cir. 1980), cert. denied, 450 U.S. 920, 101 S.Ct. 1367, 67

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[1] As authority the Tribe cites a NLRB decision ruling that tribal governments are governmental entities and therefore are implicitly exempt from regulation under the Labor Management Relations Act because the Act exempts other types of governmental employers. Fort Apache Timber Co., 226 N.L.R.B. No. 63 (1976). The Board's ruling, however, is inapposite to the issue before us. Classifications made under the labor laws are not controlling in tax cases. Paseiro v. Commissioner, 46 T.C.M. (P-H) ¶77,359 (1977). Moreover, the Board explicitly declined to hold that the Tribal Council was the equivalent of a state. Rather, it merely ruled that the Tribe had sufficient governmental attributes to qualify under the Act's broad government exemption provision, a provision more inclusive than the excise tax exemptions before this court.

L.Ed.2d 347 (1981). But "wishing" an ambiguity does not make. Courts are not free to create ambiguities in order to serve the interests of Indians. Fry v. United States, 557 F.2d 646, 649 (9th Cir. 1977), cert. denied, 434 U.S. 1011, 98 S.Ct. 722, 54 L.Ed.2d 754 (1978).

[3, 4] Moreover, there are other interpretive maxims to which we must give weight. For example, absent clear statutory guidance, the court will not imply tax exemptions. Mescalero Apache Tribe v. Jones, 411 U.S. 145, 156, 93 S.Ct. 1267, 1274, 35 L.Ed.2d 144 (1973); United States v. Anderson, 625 F.2d at 916-17; Fry v. United States, 557 F.2d at 649. And also "'[t]he intent to exclude must be definitely expressed where, as here, the general language of the Act laying the tax is broad enough to include the subject matter.'" United States v. Anderson, 625 F2d at 913 (quoting Choteau

v. Burnet, 283 U.S. 691, 696, 51 S.Ct. 598, 601, 75 L.Ed. 1353 (1931)).

[5, 6] We conclude that the Code and Treasury regulations pursuant thereto unambiguously restrict the benefit of the disputed exemption to states, political subdivisions of states, and the District of Columbia. The Tribe cites no legislative history to show that Congress intended other than the Code's plain meaning. Significantly, the Internal Revenue Service has ruled in three separate contexts that tribal governments are not treated as states for purposes of the Code: Gifts to tribal governments are not deductible as charitable contributions, Rev.Rul. 74-179, 1975-1 C.B. 279; interest on bonds issued by tribal governments is not tax exempt, Rev.Rul. 68-231, 1968-1 C.B. 48; and, for the issue presented here, tribal governments are not exempt from excise

taxes, Rev.Rul. 58-610, 1958-2 C.B. 815.[2] Moreover, both the House of Representatives and the Senate presently are considering bills that would expressly afford tribal governments the same treatment under specified tax laws as that afforded to states. S. 1298, 97th Cong., 1st Sess. (1981); H.R. 3760, 97th Cong., 1st Sess. (1981). These bills would provide tribal governments an express exemption from excise taxes. We are not prepared to assume that Congress is engaged in unnecessary work and, of

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2 Revenue rulings, as opposed to regulations or Treasury Decisions, do not have the force of law. Washington State Dairy Prods. Comm'n v. United States, 685 F.2d 298, 300 (9th Cir. 1982). They may, however, be helpful in interpreting the law by indicating the trend of opinion among administrators experienced with the tax laws. Il.; see Udall v. Tallman, 380 U.S. 1, 16-17, 85 S.Ct. 792, 801, 13 L.Ed. 2d 616 (1965); Ricards v. United States, 652 F.2d 897, 902 n.12 (9th Cir. 1981).

course, it is not within our authority to relieve Congress of its burden.

III.

NO IMPLIED EXEMPTION

[7] The Tribe correctly points out that our inquiry is not limited simply to a determination of whether or not there is an exemption within the Code. Federal statutes and treaties dealing in particular with Indians have a direct bearing on Indian tax questions. Squire v. Capoeman, 351 U.S. 1, 5-6, 76 S.Ct. 611, 614-15, 100 L.Ed. 883 (1956); accord United States v. Anderson, 625 F.2d at 913. This court will imply a tax exemption from a statute or treaty that contains "express exemptive language." United States v. Anderson, 625 F.2d at 913; see, e.g., Squire v. Capoeman, 351 U.S. 1, 76 S.Ct. 611, 100 L.Ed. 883 (1956) (construing sections 5 and 6 of The General Allotment Act of 1887 to create an

express tax exemption for an Indian deriving income directly from his own trust allotment).

A. Tribe's Treaty with the United States.

[8] The Tribe's treaty with the United States, however, is silent on the issue of federal taxation. Treaty of June 25, 1855, 12 Stat. 963. The Tribe's treaty with the United States, however, is silent on the issue of federal taxation. Treaty of June 25, 1855, 12 Stat. 963. The Tribe urges us to find an exemption within the treaty's silence. We cannot accede. Absent a "definitely expressed exemption," Indian tribes and their members are subject to federal taxation. Mescalero Apache Tribe v. Jones, 411 U.S. at 155, 93 S.Ct. at 1274. Silence alone does not create in favor of the Tribe an implied immunity from federal excise taxes.

B. Pervasive Federal Regulatory Scheme for Tribal Resources.

Turning to the federal regulatory scheme we acknowledge that the federal government's regulation of tribal timber resources is comprehensive. Timber on reservation land is owned by the United States for the benefit of the Tribe. See United States v. Mitchell, 445 U.S. 535, 100 S.Ct. 1349, 63 L.Ed.2d 607 (1980). Timber may be sold only with the Secretary's consent, and proceeds from any such sale, less administrative expenses incurred by the federal government, are to be used for the benefit of the Indians or transferred to the Indian owner. 25 U.S.C. §§ 406-407. This regulation reflects a federal policy to manage the land resources of Indian reservations for the optimum economic benefit of the Indians. United States v. Anderson, 625 F.2d at 917.

In White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 100 S.Ct. 2578, 65 L.Ed.2d 665 (1980), the Supreme Court held that the pervasive federal regulatory scheme over tribal timber operations precluded the assessment of state excise taxes against two non-Indian logging companies solely operating on the Tribe's reservation. The Court identified a variety of ways in which the "state taxes would obstruct federal policies." Id. at 148-50, 100 S.Ct. at 2586-87. Federal law preempted Arizona's tax because the interests inherent in the federal government's comprehensive plan for the management of Indian lands and resources outweighed the state's interest in raising revenue. Id. at 150, 100 S.Ct. at 2587.

The Tribe contends that the federal taxes at issue here suffer the same infirmities that were fatal to Arizona's tax in White Mountain. Indeed, federal

and state excise taxes could impose similar economic burdens on tribal forestry operations. But, as the Tribes admit, White Mountain is not controlling precedent in the case before us. The Supreme Court's preemption analysis did not require an "express congressional statement" that the state tax was preempted. Id. at 151, 100 S.Ct. at 2587-88. In contrast, to imply an exemption from federal taxes in this case we must find "express exemptive language" in a statute or treaty. This is a wise requirement. To insist on such language reduces the risk of courts concluding that the left hand of the federal government is preventing the right form doing its job when in fact both are doing exactly what they should.

As evidence of "express exemptive language" the Tribe cites 25 U.S.C. § 413, and regulations promulgated pursuant

thereto. This section authorizes the Secretary "to collect reasonable fees to cover the cost of any and all work performed for Indian tribes." 25 U.S.C. § 413. The Secretary's regulations do not provide for federal excise taxes and the Tribe reasons that liability for excise taxes constitutes a charge not authorized by those regulations. This contention is without merit. Excise taxes are not charges for services. And section 413 is not a delegation by Congress to the Department of Interior of authority to tax Indian tribes. The lack of specific reference to excise taxes in the Secretary's regulations does not constitute "express exemptive language."

The government's supervisory role in tribal timber operations evidences a federal policy in favor of efficient land use on Indian reservations. The Tribe argues that federal excise taxes on its

sawmill operations obstruct this federal policy. But we have repeatedly held that such a policy alone does not create a federal tax exemption.

> [I]t is one thing to say that courts should construe treaties and statutes dealing with Indians liberally, and quite another to say that, based on those same policy considerations which prompted the canon of liberal construction, courts themselves are free to create favorable rules.

Fry v. United States, 557 F.2d at 649. We deal here with an explicit federal Indian policy and an explicit federal tax statute that does not exempt the taxpayer. The Tribe must address its prayer for relief to Congress, not the courts.

AFFIRMED.

CERTIFICATE OF SERVICE

STATE OF OREGON)
) ss.
County of Deschutes)

I, ROBERT L. NASH, being first duly sworn, depose and say that I am one of the attorneys for Petitioner in this action.

I certify that I served the foregoing Petition for Writ of Certiorari on ROSCOE L. EGGER, JR., Commissioner of the Internal Revenue Service, and on the Solicitor General, Department of Justice, who are all of the parties required to be served, and that such parties were served by mailing to each of them three true, correct copies of the Petition for Writ of Certiorari, certified by me as such, contained in a sealed envelope, with first class postage prepaid, addressed to such parties at their regular post office addresses, to wit:

ROSCOE L. EGGER, JR.
Commissioner of the Internal
Revenue Service
United States Department of the
Treasury
1111 Constitution Avenue
Washington, D. C. 20224

Solicitor General
Department of Justice
Washington, D.C. 20530

and deposited in the United States post

office at Bend, Oregon, on January 27, 1983.

JOHNSON, MARCEAU,
KARNOPP & PETERSEN

/s/ Robert L. Nash
ROBERT L. NASH

SUBSCRIBED AND SWORN to before me this 27th day of January, 1983.

/s/ Rita Ann Graham
Notary Public for Oregon
My Commission Expires: 1/18/86